

**Central Administrative Tribunal  
Principal Bench**

OA No.887/2018

Orders Reserved on 13.02.2019

Pronounced on.20.02.2019

***Hon'ble Mr. Pradeep Kumar, Member (A)***

Ms. Sujata Chakraborty,  
Aged 29 years,  
Divorced D/o Late Sh. Mrigank Chakraborty,  
"Family Pension, "of Ex-Asstt: Controller of  
Printing & Publication,  
Rajya Sabha Secretariat,  
Min. Of Parliamentary Affairs,  
New Delhi, R/o C-196, Chander Vihar,  
Delhi-92.

.. Applicant

(By Advocate Shri Shesh Datt Sharma)

**Versus**

1. Union of India through  
Secretary,  
Ministry of Parliamentary Affairs, 207,  
207, Parliament House Annexe,  
New Delhi.
2. Director,  
Pay and Accounts Office,  
Rajya Sabha Secretariat,  
Parliament House Annexe,  
New Delhi.

...Respondents

(By Advocate Ms. Tatini Basu)

**ORDER**

The applicant's father was appointed to Rajya Sabha Secretariat as a Copy Holder vide office order dated 06.06.1966. Unfortunately, he expired on 28.03.2004 while

still in service. Thereafter, the applicant's mother was in receipt of family pension till 10.05.2010 when she also unfortunately expired.

The applicant was married on 05.09.2008 after the death of her father but when her mother was still alive. The applicant further brought out that she is the only child of her deceased parents and was dependent upon them. Her marriage was solemnized in the circumstances when her husband's parents were opposed to it. As such, from day one she along with her husband was staying with her old mother. She was thus fully dependent on her mother.

Certain marital disputes arose and she had made a formal report to the Women Cell, Nanak Pura Police Station. It was alleged that her husband and mother-in-law harassed her physically and mentally for the sake of dowry demands. However, since she wanted reconciliation with her husband, efforts were made for reconciliation at that time and it is reflected in the report submitted by the Inspector of Crime Women Cell on 17.11.2009. These efforts of reconciliation were, however, unsuccessful and a formal petition for divorce was subsequently filed on 28.03.2013 and the decree of divorce was passed by the court on 21.11.2017. Meanwhile, one son was also born from this marriage on 20.10.2010.

2. The applicant was facing great difficulties to sustain herself and her young son and, therefore, she applied for family pension which is admissible to the divorced daughter in terms of various circulars issued by the Government on the subject. It is seen from a letter dated 17.03.2017 issued to applicant by the Pay and Accounts Officer, Rajya Sabha Secretariat that she was asked to submit certain documents so that her family pension as a divorced daughter can be processed. Thereafter, her case was referred to DoP&PW vide Pay and Accounts Officer, Rajya Sabha letter dated 09.01.2018. This was replied by the DoP&PW vide their letter dated 16.02.2018, which reads as under:

“I am to refer to Rajya Sabha, Pay and Account Office letter No.PAO/RS/FP/2017, dated 9<sup>th</sup> January, 2018 on the subject mention above.

2. In this respect it is clarified that divorced daughter is eligible for grant of family pension subject to fulfilment of eligibility condition laid down in rule 54 of CCS (Pension) Rules, 1972 and clarification issued from time to time. In the present case divorce proceedings started from 28.3.2013 and completed on 21.11.2017. The proceedings started from 28.3.2013 i.e., after the death of both parents. Thus, as per this department's OM No.1/13/09-P&PW(E), dated 19.7.2017 she is not eligible for grant of family pension as divorce proceedings started and completed after death of her mother.”

3. The applicant's request for grant of family pension has, therefore, not been accepted. Feeling aggrieved, the instant OA has been filed.

4. The applicant has relied upon the OM dated 19.07.2017 issued by DoP&PW. The relevant portions are reproduced below:

“3. It was clarified, vide this department Office Memorandum of even number, dated 11th September, 2013, that the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes.

4. It was clarified that a daughter if eligible, as explained in the preceding paragraph, may be granted family pension provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents and still on the date her turn to receive family pension comes. Accordingly, divorced daughters who fulfil other conditions are eligible for family pension if a decree of divorce had been issued by the competent court during the life time of at least one of the parents.

5. The department has been receiving grievances from various quarters that the divorce proceedings are a long drawn procedure which take many years before attaining finality. There are many cases in which the divorce proceedings of a daughter of a Government employee/pensioner had been instituted in the competent court during the life time of one or both of them but none of them was alive by the time the decree of divorce was granted by the competent authority.

6. The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to grant family pension to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the life-time of the employee/pensioner or his/her spouse but divorce took place after their death-provided the claimant fulfils all other conditions for grant of family pension under rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce.”

5. The applicant pleads that divorced daughters of pensionable employees are eligible for grant of family pension

w.e.f. 30.08.2004 in terms of DoP&PW OM dated 11.09.2013 and clarified by many other subsequent instructions also.

6. The applicant has pleaded that, when marital disputes arose, she was left with no alternative and had to approach the Women Cell under Nanak Pura Police Station. She tried to save her marriage, as is also clear from the report prepared by the Inspector of Women Cell on 17.11.2009. However, these efforts did not succeed and eventually the petition for divorce was filed on 28.03.2013.

It is thus admitted that formal petition for divorce was filed after her mother had expired yet the basic conditions which led to divorce had started while her mother was still alive. In view of this, the conditions specified in para 3 of DoP&PW OM dated 19.07.2017 are fully applicable (para 4 supra). Therefore, the rejection of her request for family pension, as communicated by the DoP&PW letter dated 16.02.2018, cannot be sustained.

7. The respondents opposed the OA. It was brought out that the applicant is the daughter of an employee of Rajya Sabha Secretariat. In terms of Section 2 (d) of the Administrative Tribunals Act, 1985 the following provision has been made:

**“2. Act not to apply to certain persons :** The provisions of this Act shall not apply to-

- (a) .....
- (b) .....
- (c) .....
- (d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory.”

It was, therefore, pleaded that since applicant's father was an employee of Rajya Sabha Secretariat, the present Application is not maintainable as the Tribunal does not have jurisdiction over the employees of Rajya Sabha Secretariat.

8. It was further brought out that divorce proceedings normally take a long time to conclude and, therefore, a question has arisen as to under what conditions the divorced daughters are to be treated as eligible for family pension. This issue was considered by DoP&PW and clarification was issued vide OM dated 19.07.2017. Specific attention was drawn to paras-5 & 6 of these instructions (para-4 supra).

9. In the instant case marital disputes may have arisen when applicant's mother was alive but the divorce petition was filed subsequent to death of her mother. However, still taking a sympathetic view, this issue was referred to the DoP&PW also, who have clarified vide their letter dated 16.02.2018 (para 2 supra) that the instant applicant cannot be covered under eligibility of a divorced daughter, as the divorce

proceedings had started from 28.03.2013 only when both her mother and her mother had already expired, and thus the case is not covered as specifically provided in para-6 of DoP&PW OM dated 19.07.2017.

10. The matter has been heard at length. The applicant's case was represented by Shri Shesh Datt Sharma, learned counsel whereas the case of the respondents was argued by Ms. Tatini Basu, learned counsel for the respondents.

11. The grievance in this OA pertains to refusal to grant family pension to a divorced daughter of a late employee of Rajya Sabha Secretariat. Admittedly, for such matters the Rajya Sabha Secretariat is following the policy directives issued by DoP&PW and the eligibility of instant applicant was rejected vide DOP&PW letter dated 16.02.2018 (para-2 supra). It, therefore, follows that genesis of this rejection, lies in the interpretation given by DoP&PW to their own instruction dated 19.07.2017 relating to family pension to a divorced daughter.

12. In this connection, the applicant had also drawn attention to a judgment given by the Tribunal in **Shri R.N. Kalra v. Employees Provident Fund Organisation**, [1995 (2) (CAT) AILSJ 165]. In this case the applicant was working as a Private Secretary in Lok Sabha Secretariat. Certain vacancies arose in Regional Provident Fund Commissioner on deputation

basis. The applicant also applied for the same. His application was duly forwarded by the Lok Sabha Secretariat but eventually he was not selected by the office of EPFO for filling up the vacancy on deputation basis. On such a rejection the applicant felt aggrieved and approached the Tribunal. The respondents at that time had raised an objection that applicant being an employee of Lok Sabha Secretariat, the Tribunal does not have jurisdiction in terms of Section 2 (d) of the Administrative Tribunals Act, 1985. This was considered by the Tribunal at that time and it was held as under:

“4. The respondents have taken a preliminary objection that having regard to Section 2 (d) of the Administrative Tribunals Act, 1985, this Act was not to apply to any person appointed to the Secretarial Staff of either House of Parliament. This objection can be straightaway dealt with inasmuch as the applicant is not seeking any appointment to the Secretarial staff of either House of Parliament but his grievance is with regard to his non-selection to the post of RPFC Grade I in the Organisation of Respondent No.2. In the circumstances, the objection raised under Section 2 (d) of the Administrative Tribunals Act has no force and is rejected.”

13. In keeping with discussion in para 11 & 12 above, Section 2 (d) of the Administrative Tribunals Act, 1985, (para 7 supra) is not attracted in the instant case and the Tribunal has jurisdiction to adjudicate this matter.

14. The Government had been issuing a slew of policy directives to take care of a very distressful conditions faced by the divorced daughters. These conditions have been relaxed



also over time. The current instructions vide OM dated 19.07.2017, clearly specify that such cases will be eligible if divorce petition is filed during the life time of the employee/pensioner (para 4 supra, sub para 6 thereof). This condition is not admittedly fulfilled in this case as both applicant's father as well as mother who was a recipient of family pension, have both expired many years prior to filing of divorce petition. This is very clearly mentioned in the rejection letter dated 16.02.2018 (para 2 supra).

When such is the express provision in relevant policy and the policy has been correctly interpreted and implemented, the applicant's plea for grant of family pension, in instant OA, is not finding acceptability. Sympathies cannot override clearly stated public policy.

15. In view of the foregoing, the OA is dismissed being devoid of merit. There shall be no order as to costs.

**(Pradeep Kumar)**  
**Member (A)**

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